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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re L.R., et al., Persons Coming Under the Juvenile Court Law	
	E062759
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent;	(Super.Ct.No. RIJ1300631)
	OPINION
v.	
M.R., Defendant and Appellant.	

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson, Judge. Affirmed.

Tiffany Gilmartin, under appointment by the Court of Appeal, for Defendant and Appellant.

Gregory P. Priamos, County Counsel and James E. Brown, Guy B. Pittman, and Julie Koons Jarvi, Deputies County Counsel, for Plaintiff and Respondent.

Based on allegations flowing from a domestic violence incident, L.R., age 10, and Jaden, age 5, became dependents pursuant to Welfare and Institutions Code,[1] section 300, and were placed with their maternal grandparents. At the 12-month review hearing, the court terminated reunification services as to M.R., the children's mother, due to her minimal participation, and scheduled a hearing pursuant to section 366.26. Mother then became motivated to participate in services, and submitted information about her progress in a petition to modify the prior order, pursuant to section 388, prior to the hearing on the selection and implementation of a permanent plan of adoption. The juvenile court denied the modification request and terminated parental rights. Mother appealed.

On appeal, mother challenges only the denial of her section 388 petition. We affirm.

BACKGROUND

On May 6, 2013, the Riverside Department of Public Social Services (DPSS or the Department) received a referral based on domestic violence between mother and her then boyfriend, D.G. Jaden, then age 5, saw the confrontation, which frightened him. When interviewed, L.R. reported that D.G. had kissed her on the lips and slapped her on the buttock, which made her feel uncomfortable, but mother minimized the incident.

Both children reported being disciplined by spanking with belts, which left marks. Both children reported that mother and D.G. drank excessively, smoked marijuana every

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

day, and fought regularly. D.G. drove while drinking, and the children rode in the car with him. The children were sent to the park unsupervised, where many homeless people hang out, during the day when mother and D.G. got drunk. The children, when taken to their maternal grandparents' home, were afraid of D.G. and unwilling to return to their mother. Prior welfare history revealed mother had a history of drug use, which included methamphetamine and cocaine, as well as a mental health history for which she did not take medication. She had an expired medical marijuana card for the treatment of depression and anxiety.

A juvenile dependency petition was filed alleging that the children came within section 300, subdivisions (b) and (g), based on mother's failure to supervise the children or protect them against D.G.,[2] mother's history of abusing alcohol and marijuana while the children were in her care, and inappropriate discipline, as well as the failure to protect or support the children by their respective fathers, whose whereabouts were unknown.

On July 24, 2013, the mother submitted to jurisdiction based on the social worker's reports. The court found L.R. came within section 300, subdivision (b), and that Jaden came within section 300, subdivisions (b) and (g). The court removed custody of the children from the mother, and ordered her to comply with family reunification services. The children were placed with the maternal grandparents. The case plan

[2] The initial petition and the detention report indicated that D.G. was a sexual offender who was required to register pursuant to Penal Code section 290. However, in the jurisdictional report, the social worker indicated that D.G. had been convicted of violating Penal Code sections 273a, subdivision (b) (misdemeanor child endangerment), and 647.6 (annoy or molest a child under 18), and was not listed on the sexual offender registry.

required mother to enroll in a domestic violence program, complete a substance abuse program, complete an anger management/domestic violence program, participate in general counseling, and random drug testing.

On January 14, 2014, DPSS submitted a six-month status review report. The report reflected that mother had married D.G. on August 23, 2013, and that she and D.G. had moved six times in six months. Her relationship with D.G. was still volatile, and she still did not take medications for her mental health diagnoses of major depression and bipolar disorder. Mother was unemployed, although on various occasions she informed the social worker she was working, or that she had lost her job, or that she had a job lined up.

Mother's progress in completing her case plan was minimal and unsatisfactory: she completed parenting classes and attended individual counseling, but did not participate in substance abuse, anger management, or domestic violence programs, and maintained a transient lifestyle. Five random drug tests were positive for marijuana. At visits, mother's conversational focus was more about D.G., causing the maternal grandmother to be concerned about the quality of mother's relationship with the children. On the other hand, the children adjusted well to their placement with their maternal grandparents and they were afraid to return to mother if D.G. were still there.

At the six-month review hearing held on January 27, 2014, the court found that the extent of mother's progress was minimal and that it would be detrimental to return the children to mother's custody. The court continued the children as dependents and

maintained the children in their relative placement. The court continued reunification services for another six months, and authorized services for D.G.

On July 10, 2014, the social worker submitted a report for the 12-month review hearing, recommending that services be terminated. The social worker reported that mother had not made substantial progress on her case plan, and remained in a volatile relationship with D.G., who felt she invested too much time in her children. Mother had left D.G. on at least two occasions due to his verbally abusive and controlling treatment of her, only to resume the relationship within days.

Although mother had completed parenting education and individual counseling, she did not demonstrate she had benefitted from services. She switched from one substance abuse program to another without following through, and she continued to live a transient lifestyle. In January 2014, mother was referred to Catholic Charities' program in Lake Elsinore because it was close to where she lived at the time, but she did not follow up.

In February 2014, the social worker had provided mother with a referral for Family Preservation Court's Center for Change. However, mother refused to attend unless a referral was provided for D.G. The social worker provided a referral for D.G. on February 26, 2014, but he did not start until April 30, 2014. Mother completed the intake assessment for the Family Preservation Court program on April 30, 2014, and tested positive for marijuana at that time.

Prior to commencing the Family Preservation program, mother had informed the social worker that she had found a place at Agape Restoration Ministry. Mother was still

married to D.G., but the two had been evicted from the home of D.G.'s sister in April 2014. After mother and D.G. moved into Agape Restoration Ministry, D.G. was discharged due to his aggressive and verbally abusive behavior. Subsequently they turned to the Family Preservation Court program, but on June 30, 2014, mother informed the social worker that she and D.G. were staying at Pathway to Life Shelter.

Mother was unemployed and financially unstable; in fact, she and D.G. had been seen panhandling in Riverside. Mother completed a counseling program with Community Access Network, but did not demonstrate she had benefitted from it. She was advised to follow up with another program, but she attended only three sessions with the new therapist and failed to appear for two sessions. She also enrolled in anger management in August 2013, but was discharged for failing to attend. When she was advised to attend another program, mother refused unless D.G. was in the program.

Visitation between mother and the children during the reporting period was regular and mother was appropriate, but she interacted with Jaden more than L.R.. On most visits, D.G. was present, which made L.R. fearful; nevertheless, mother continued to encourage L.R. to talk to him. In short, mother's progress was minimal: she had been involved in the Family Preservation Court program for only two months, and she was not reliable or consistent in providing information to the social worker.

Prior to the 12-month review hearing, the social worker submitted an addendum report on August 14, 2014. That report informed the court that mother had advised the social worker on August 8, 2014, that she and D.G. had moved to a rented room, making a total of nine moves for mother during the dependency. Her pattern of instability

continued. Mother and D.G. were still unemployed, but they received temporary State Disability benefits. Although mother had gone to Emergency Treatment Services for depression and was prescribed medication, she failed to follow up with a psychiatrist and was not taking medication.

By the time of the addendum report, mother's efforts at reunification were still a major concern. Her efforts and progress while enrolled in the Family Preservation Court program showed she had not benefitted from the program, despite ample opportunities. She had been sober for three months by August 2014, but that was insufficient time to show she was serious about changing, especially when she continued to minimize her drug problem. She had not taken her treatment and recovery seriously, moving from one program to the next. Besides the social worker, mother's case manager and the conjoint therapist also reported concerns about her denial and failure to take responsibility. Mother had not fully benefitted from programs.

Mother participated in random drug testing as part of the Family Preservation Court program, and started her domestic violence counseling program on July 16, 2014. By then, mother had attended one individual counseling session and one group session. Mother appeared to be in denial about her current situation, in that she continued to defend D.G. and make excuses for his behavior. During conjoint counseling with L.R., the therapist was concerned about what she saw as a deteriorating relationship. The therapist related that mother behaved immaturely at the sessions and made L.R. feel guilty for not giving D.G. a chance, after mother had worked so hard to regain custody.

Mother also told L.R. she would have to choose between her grandparents and her mother. The therapist did not believe mother was ready to be a parent.

Visits generally continued to go well, except for an incident in which mother became physically aggressive with the maternal grandfather over a disagreement about food and clothing mother had brought for the children. The police were called, but no charges were filed. The court conducted the contested 12-month review hearing on August 21, 2014, terminated mother's reunification services and scheduled a hearing for the selection and implementation of a permanent plan.

On December 15, 2014, mother filed a petition to modify a prior court order pursuant to section 388. To demonstrate changed circumstances, mother alleged she had been actively involved in her case plan, completed a domestic violence and anger management programs, filed a petition for dissolution of her marriage to D.G., and now lived in Sylvia's Serenity Sober Living, where she participates in their programs and has tested clean consistently. She sought an additional six months of services. To show that a modification would be in the children's best interests, the petition alleged mother had maintained consistent four-hour supervised visits with the children at which she played and interacted with them well, and that it would be in their best interests to foster a strong bond with mother. The juvenile court summarily denied the petition without a hearing because the proposed order did not promote the best interests of the child.[3]

[3] The record reflects that mother's petition sought modification of prior orders respecting L.R., only. We assume that oversight was merely a drafting error.

The court conducted the section 366.26 hearing on December 18, 2014, but mother did not appear. Mother's counsel submitted on the basis of the social worker's reports, and the court terminated mother's parental rights as to both children. Mother appealed.

DISCUSSION

The sole issue presented on appeal challenges the summary denial of mother's section 388 petition. Mother argues that she satisfied both prongs of section 388 and was entitled to a hearing on the petition. We disagree.

A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist, and (2) the proposed change would promote the best interests of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 316-317.) The parent bears the burden to show both a legitimate change of circumstances and that undoing the prior order would be in the best interest of the child. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529 (*Kimberly F.*).) Generally, the petitioner must show by a preponderance of the evidence that the child's welfare requires the modification sought. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1228.)

Section 388 petitions are liberally construed in favor of granting a hearing to consider the request. (*In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1413-1414.) A parent need only allege a prima facie case in order to trigger the right to proceed by way of a full hearing. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310; *In re Edward H.* (1996) 43 Cal.App.4th 584, 592.) A prima facie showing refers to those facts which will sustain a

favorable decision if the evidence submitted in support of the allegations by petitioner is credited. (*Edward H., supra,* at p. 593, citing *College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 719, fn.6.) A prima facie case is made if the allegations demonstrate that both elements of section 388 are supported by probable cause. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1157.)

Section 388, subdivision (d), provides that if it appears that the best interests of the child may be promoted by the proposed change of order, the court shall order that a hearing be held. However, if the liberally construed allegations do not show changed circumstances such that the child's best interests will be promoted by the proposed change of order, the dependency court need not order a hearing. (Cal. Rules of Ct., rule 5.570(d)(1); *In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

Here, mother's reunification services were terminated at the 12-month review hearing held on August 21, 2014. Prior to that date, she had completed parenting classes, so her reference to that program in her modification petition was not a changed circumstance.

Prior to the termination of services, mother commenced a domestic violence program, which she completed on October 23, 2014, and for which received a certificate on November 12, 2014. Mother moved into Sylvia's Serenity Sober Living on September 15, 2014, and had submitted only one drug test by November 17, 2014, one month before she filed her 388 petition. She commenced the anger management program at Catholic Charities on July 28, 2014, and had completed 13 of the 16 sessions by November 10, 2014. She completed the Alternatives to Domestic Violence program on

November 12, 2014. Although mother had finally completed domestic violence, anger management, and parent education programs, she had not completed any drug treatment programs, and had not demonstrated she had benefitted from the programs she did complete.

Moreover, her living situation was still "fluid" because she was living in a sober living facility at the time she filed the petition and had only been there a few months. Her pay stub reflected pay for one pay period of six days, so she was not financially stable. And filing a petition for dissolution of marriage is not significant considering mother's pattern of leaving D.G. and then reconciling with him. Mother's circumstances were changing, not changed. (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223.)

Regarding the children's best interests, mother's petition failed to describe specifically how the petition would advance the child's best interests, as is required. (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1157.) To the contrary, it alleges only that mother has visited consistently, played and interacted with them, and that "[i]t would be in the children's best [*sic*] to continue to foster the strong bond they have with their mother." In mother's reply brief, she urges that the children were bonded to her, pointing to information contained in a social worker's report considered by the court at the 12-month review hearing, when services were terminated. However, this circumstance changed for the worse: the conjoint therapist described the bond between L.R. and mother as deteriorating in the addendum report of August 14, 2014, while the section 366.36 report revealed both children were not sure they could trust mother to go through with a divorce and wished to be adopted. There is nothing in the record to support an inference that

mother's bond with the children was so strong that their best interest would be promoted by extending services for another six months. Both children wanted to stay with their grandparents.

Mother did not get serious about reunification until after services were terminated. She completed some plan requirements but did not demonstrate she benefitted from them, and she had only been clean and sober for a few months prior to filing her modification petition. The trial court did not abuse its discretion in denying a hearing on the petition.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

MILLER
J.

CODRINGTON
J.